

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of the Commission's Rules to)
Establish Rules and Policies Pertaining)
To a Non-Voice, Non-Geostationary)
Mobile-Satellite Service)

CC Docket No. 92-76

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SUMMARY

While it supports many Commission proposals advanced in the NPRM, STARSYS has concerns about several proposed service and licensing rules.

In particular, although it agrees that an applicant's financial qualification should be based upon ability to implement a two-satellite system, STARSYS believes that it is unrealistic to expect applicants to make necessary changes in system design and business plans and to secure reasonable financial commitments within 90 days of the adoption of final rules. Accordingly, STARSYS suggests that the Commission afford current applicants up to nine months following the release of the report and order within which to make the financial showing ultimately required under the new rules.

STARSYS concurs fully with the Commission's decisions not to require the filing of information pertaining to domestic frequency coordinations, or to adopt a formal spectrum efficiency standard. However, it disagrees with the Commission's proposal to "monitor" spectrum efficiency by imposing semi-annual reporting requirements on NVNG MSS operators. The potential damage from disclosure of commercially sensitive information and largely unquantifiable information about system capacity utilization and other loading rates far outweighs any potential benefit. The Commission is well equipped to monitor informally the spectrum utilization and construction progress of operational NVNG MSS systems.

With respect to system licensing, STARSYS believes that the Commission must exercise great care in imposing specific milestones upon permittees to ensure that similarly situated applicants are treated similarly. In addition, while it concurs with the conclusion that NVNG MSS systems, as well as transceivers, should receive "blanket" authorizations, STARSYS urges that satellites under a blanket authorization simply be ~~required to be "operationally equivalent" in terms of potential~~

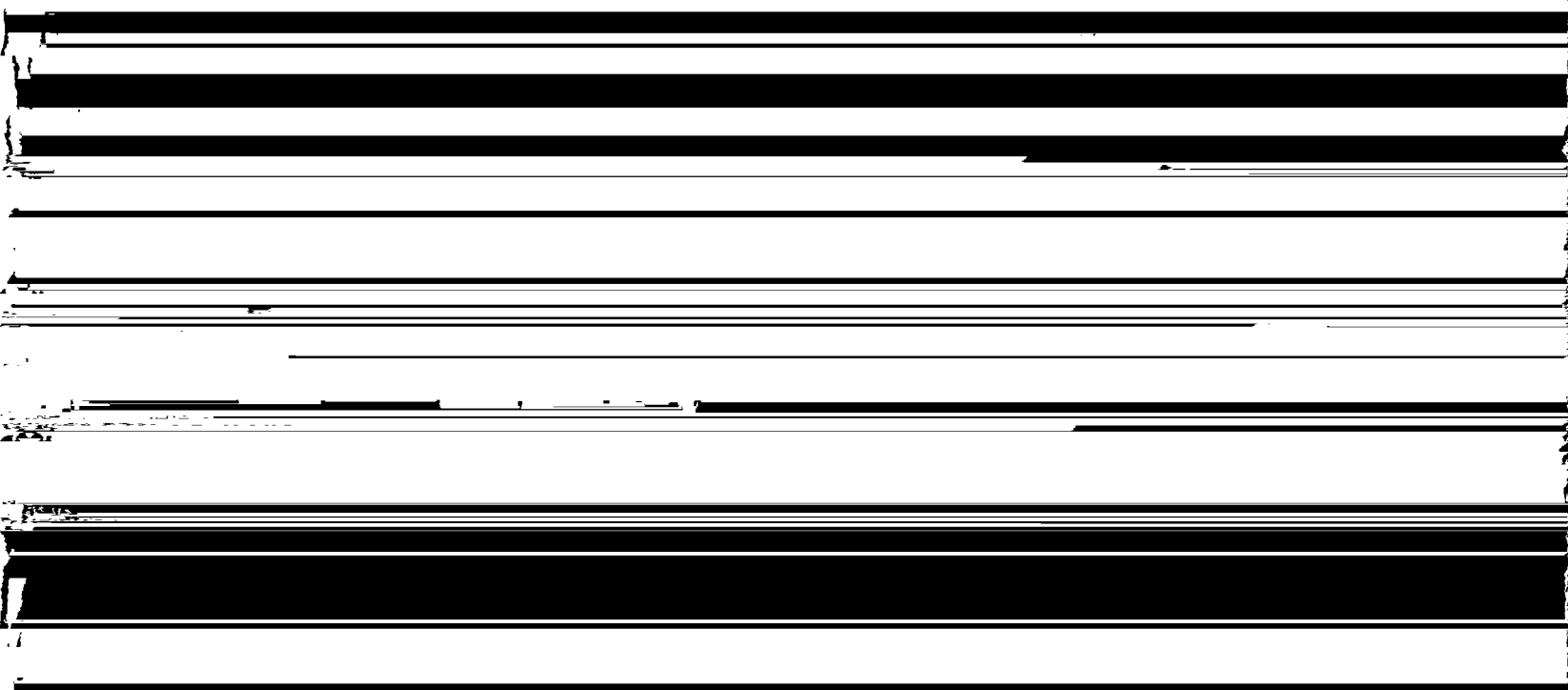
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preparation for WARC-92 and participated on and supported the U.S. Delegation to WARC-92, where this spectrum was allocated to this service on a worldwide basis. Subsequently, STARSYS was represented on the Below 1 GHz LEO Negotiated Rulemaking Committee, which formulated the technical rules proposal that was largely adopted by the Commission. See Report of the Below 1 GHz LEO Negotiated Rulemaking Committee, CC Docket No. 92-76, dated September 16, 1992.

STARSYS enthusiastically supports the Commission's initiative in this proceeding. Expeditious action in this docket will advance the public interest by permitting system applicants to move forward with proposals to provide a variety of new low



As for the proposed rules themselves, STARSYS is largely in agreement with the Commission's proposals, many of which it helped to formulate. STARSYS, however, has some serious concerns about several of the Commission's proposed service and licensing rules for the NVNG MSS. In these Comments, STARSYS responds to the Commission's requests for public input, and identifies those rules it feels are unnecessary, counterproductive, or in need of slight clarification or modification.

II. DISCUSSION

A. The Commission Should Permit The Current Group Of Applicants Up To Nine Months Within Which To Meet The Financial Qualification Requirements Ultimately Adopted In This Proceeding.

At the outset, STARSYS concurs with the Commission's preliminary assessment that sufficient service can be offered by a two-satellite system to justify basing financial qualification upon the ability to construct, launch, and operate such an initial system. See NPRM at ¶ 18. In STARSYS's design scheme, at least, two satellites are capable of performing many of the functions of a full satellite constellation, albeit at a less comprehensive level of service. Nevertheless, such a system requires substantial financial commitment for space station design and launch, development and construction of ground station facilities, design and provision of mobile terminals in the marketplace, and a full year of system operation. The public interest will be served, therefore, by basing an applicant's

initial financial qualification to provide service on a demonstration of current assets, or irrevocable financial commitments, sufficient to construct, launch, and operate a two-satellite system for one year. See Proposed § 25.142(a)(4).

In the concluding paragraph of the NPRM, however, the Commission proposes that the applicants now on file be permitted only 90 days in which to bring their applications into conformity with the technical and service rules ultimately adopted, and to pay the appropriate construction and launch fees. See NPRM at ¶ 37. STARSYS believes that 90 days may not be enough time for all of the applicants in the current processing group to accomplish all of the steps that must precede the securing of the firm financial commitments the Commission is proposing to require.

Specifically, once the Commission issues a report and order containing final rules (which may vary significantly or materially in certain respects from the proposals advanced in the NPRM), STARSYS and the two other pending applicants would be expected to accomplish the following tasks within 90 days:

(1) determine space station design modifications, if any, which may be required to bring systems into compliance with the final rules; (2) determine modifications, if any, to earth station (both gateway station and transceiver unit) parameters that may be necessary to meet the new rules; (3) conduct the interference analyses that are to be required; (4) develop revised system-wide construction, launch, and operating budgets; (5) solicit and

secure financial commitments sufficient to satisfy the Commission's final standard; and (6) prepare and file an amended application that incorporates all of these elements. Each of these actions requires final rules before it can be performed with the requisite degree of precision, and, further, the technical review must be completed before the applicants can even think about finalizing budgets and business plans for presentation to the capital markets.

As the Commission notes, "NVNG MSS is a new, innovative and as yet commercially unproven service." NPRM at ¶ 17. For this reason, it is unrealistic to expect that the applicants will be able to secure financial commitments -- at least such commitments that do not require the applicants to make unfavorable arrangements -- before the final rules are issued and system designs are set. Accordingly, STARSYS suggests that the current applicants be afforded up to nine months following the release of the report and order in the instant proceeding within which to make the financial showing to be required under the new rules.^{1/}

STARSYS also believes that the Commission should make explicit that all amendments filed by the initial applicants within this post-rulemaking period will be as of right. In other words, it should expressly state that any amendment to bring such

^{1/} This grace period would not be required for future NVNG MSS applicants, as they will know what the Commission's rules require, and be able and expected to be in complete compliance with those rules at the time of filing.

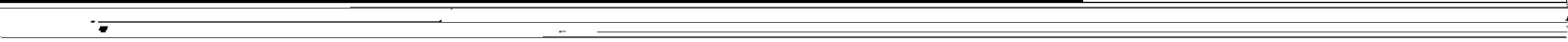
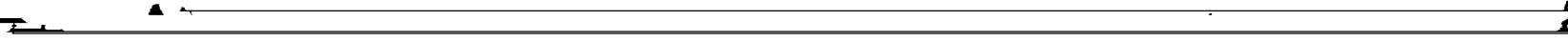

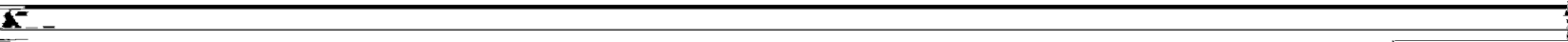




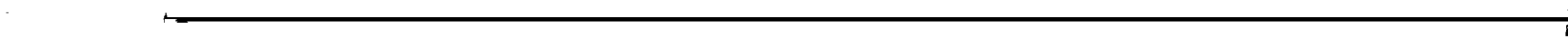



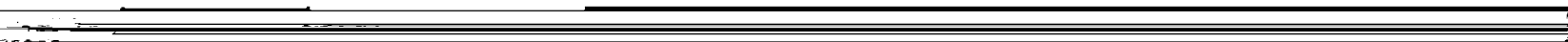





an application into compliance with the rules to be adopted, and other associated system changes, will not be treated as a "major" amendment under FCC Rule 25.116. See 47 C.F.R. § 25.116.

B. No Reporting Burdens Or Coordination Filing Requirements Should Be Imposed Upon Operators Of NVNG MSS Systems.

STARSYS concurs fully with the Commission's decision not to adopt a formal spectrum efficiency standard. See NPRM at ¶ 8. However, it disagrees with the Commission's proposal to "monitor" spectrum efficiency through the imposition of various semi-annual reporting requirements on NVNG MSS operators. See NPRM at ¶ 10; Proposed § 25.142(c). Each authorized provider would be required to file, inter alia, a detailed description of

transmission rates, satellites in view, and points of measurement -- and thus is a term that, by itself, has limited meaning and is difficult to quantify.

As a practical matter, the Commission is well equipped to gauge the spectrum utilization and construction progress of ~~proportional NBDG MCF systems through informal monitoring without~~



C. The Commission Must Ensure That License Conditions Are Applied Fairly To All Applicants, And Those Operators That Remain In Compliance With Commission Regulations Should Receive A Renewal Expectancy.

STARSYS agrees with the Commission's determination that specific milestone limits should not be codified, and supports its general guidelines for system construction and implementation. See NPRM at ¶ 23. However, in imposing specific case-by-case milestones upon permittees, extreme care should be taken to ensure that similarly situated applicants are treated similarly. See Melody Music v. FCC, 345 F.2d 730 (D.C. Cir. 1965). This will require the Commission to carefully evaluate differences in system architecture in order to impose appropriate milestone dates for satellite launch and implementation of service.

STARSYS also concurs with the Commission's conclusion that NVNG MSS systems should receive "blanket" system authorizations to operate a specified number of space stations, including replacement stations as necessary to keep a full constellation in orbit. See NPRM at ¶ 19. As far the Commission's determination that each station must be "technically identical," however, STARSYS believes the proposal requires some refinement. See Proposed § 25.142(a)(5)(i).

Specifically, because it may be desirable to use more than one satellite manufacturer during the course of a license term -- and technical advancements and service requirements or refinements may permit greater utility and efficiency with equivalent technical parameters -- STARSYS urges the Commission

to adopt a rule which simply requires all satellites under the blanket authorization to be "operationally equivalent" in terms of potential interference caused.^{2/} Such a formulation would allow NVNG MSS operators the latitude to improve system performance without either adverse consequence to other spectrum users or the need to submit unnecessary permit modification applications.

With respect to license renewal, STARSYS supports the proposal for system renewal application filing windows during the seventh year of operation. See NPRM at ¶ 22. Such a procedure appears to provide the Commission with a sufficient length of time to evaluate renewal applications and to act on them prior to expiration of the authorization. STARSYS also suggests, however, that the Commission's proposed renewal policy be modified significantly in order to provide successful system operators with an assurance of reauthorization, so long as they have a record of consistent regulatory compliance. STARSYS is aware

Specifically, the very general statement that "successful applicants" will be authorized to operate replacement systems "as long as the desired frequencies remain available for use by U.S. systems with comparable technical characteristics" does not provide operators with any meaningful assurance. NPRM at ¶ 21. At the very least, the Commission should adopt a policy of reauthorizing "successful applicants" as long as the frequencies remain available for use by U.S. systems offering equivalent services. However, STARSYS believes that the best course would be the adoption of a rule, similar to that currently applicable to domestic cellular licensees, which embodies this suggested policy and substantively defines "successful applicants." See 47 C.F.R. § 22.941, as amended in Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, FCC 93-139 (released April 9, 1993). Indeed, the current NVNG MSS applicants proposed such a rule nearly a year ago. See Jointly Filed Comments of ORBCOMM, STARSYS and VITA, dated May 18, 1992, Proposed Rule § 25.404(b).

D. Other Matters

With respect to the remaining issues raised in the NPRM, STARSYS generally supports the proposals made by the Commission. STARSYS, however, does comment specifically on several matters:

1. No Mandatory Common Carriage.

The Commission's proposal for flexible regulatory treatment of the NVNG MSS Service, permitting applicants to elect to provide service as either nondominant common carriers or noncommon carriers, is a sound one. See NPRM at ¶ 33. There is no need to mandate common carriage in this service because of the strong probability that multiple service providers will foster competition for customers and the likelihood that the nature of the service will produce a wide variety of specialized service offerings to meet needs of particular user groups.

2. No Required Modulation Technique.

Although STARSYS continues to believe that CDMA modulation presents the best opportunity for sharing and multiple entry in the NVNG MSS, it agrees with the Commission's assessment that there is currently no need, indeed no basis, upon which to adopt service accessing or modulation techniques. See NPRM at ¶ 7.

3. Blanket Licensing of Transceivers.

STARSYS also supports the proposal for blanket licensing of transceivers, with the proviso that each end user is required to obtain the authorization of a system space station operator, directly or through an authorized vendor, before transmissions are begun using that system. See NPRM at ¶ 25; proposed § 25.135(c). Once registered, each U.S. ground station will have record of a unique identifier for each mobile terminal. As for the international "roaming" issue (see NPRM at ¶ 25),


Finally, STARSYS believes that one section of the NPRM should simply be clarified upon adoption of the final rules. Proposed § 25.142(a)(3) provides that no signal generated by an NVNG MSS system, or received and retransmitted by it, will exceed the current emission limitations contained in Section 25.202(f) of the Commission's Rules. See 47 C.F.R. § 25.202(f). In the text of the NPRM, however, this rule is inaccurately portrayed as prohibiting systems utilizing bent-pipe type transponders from retransmitting any signal received from a source outside of the system. See NPRM at ¶ 16. The Commission should make clear that the appropriate interpretation of § 25.142(a)(3) is simply that systems must comply with the Section 25.202(f) limitations on out-of-band emissions.

For the foregoing reasons, STARSYS respectfully urges

service rules proposed in the NPRM, incorporating the necessary modifications and clarifications proposed herein.

Respectfully submitted,

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